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7 **UNITED STATES DISTRICT COURT**  
8 **SOUTHERN DISTRICT OF CALIFORNIA**  
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10 LUZA HILDA MATA,

11 Plaintiff,

12 vs.

13  
14 U.S. BANK NATIONAL ASSOCIATION, et  
al.,

15 Defendant.  
16

CASE NO. 11CV71 JLS (CAB)

**ORDER (1) DENYING  
PLAINTIFF'S EX PARTE  
APPLICATION FOR A  
TEMPORARY RESTRAINING  
ORDER; (2) SETTING HEARING  
FOR PRELIMINARY  
INJUNCTION**

(Doc. No. 3.)

17 On January 13, 2011, Plaintiff filed a complaint against Defendants alleging ten causes of  
18 action related to loan transactions and foreclosure. (*See* Doc. No. 1.) Concurrently therewith,  
19 Plaintiff filed the instant motion for temporary restraining order and/or preliminary injunction.  
20 (Doc. No. 3 (Mot. TRO).) Plaintiff has yet to serve process on Defendants.

21 **1. Temporary Restraining Order**

22 Temporary restraining orders are governed by the same standard applicable to preliminary  
23 injunctions. *See New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1347 n.2  
24 (1977). "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on  
25 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the  
26 balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v.*  
27 *Natural Res. Def. Council, Inc. (NRDC)*, — U.S. —, 129 S. Ct. 365, 374 (2008) (citing *Munaf v.*  
28 *Geren*, 553 U.S. 674, 128 S. Ct. 2207, 2218–19 (2008)); *see also Am. Trucking Ass'ns, Inc. v. City*

1 of *L.A.*, 559 F.3d 1046, 1052 (9th Cir. 2009). This is an “extraordinary remedy that may only be  
 2 awarded upon a clear showing that the plaintiff is entitled to such relief.” *NRDC*, 129 S.Ct. at 376.  
 3 This “clear showing” requires Plaintiff to show more than a mere “possibility” of irreparable harm,  
 4 but instead he must “demonstrate that irreparable injury is *likely* in the absence of an injunction.”  
 5 *Id.* at 375 (emphasis in original); *Am. Trucking Ass’ns*, 559 F.3d at 1052.

6 When a plaintiff has not provided notice of her application to the defendant, Federal Rule  
 7 of Civil Procedure 65(b)(1) imposes specific requirements prior to the issuance of a temporary  
 8 restraining order.

9 The court may issue a temporary restraining order without written or oral notice to  
 10 the adverse party or its attorney only if: (A) specific facts in an affidavit or a  
 11 verified complaint clearly show that immediate and irreparable injury, loss, or  
 12 damage will result to the movant before the adverse party can be heard in  
 13 opposition; and (B) the movant’s attorney certifies in writing any efforts made to  
 14 give notice and the reasons why it should not be required.

15 Fed. R. Civ. P. 65(b)(1). “The stringent restrictions imposed . . . by Rule 65[] on the availability of  
 16 ex parte temporary restraining orders reflect the fact that our entire jurisprudence runs counter to  
 17 the notion of court action taken before reasonable notice and an opportunity to be heard has been  
 18 granted both sides of a dispute.” *Granny Goose Foods, Inc. v. Bhd. of Teamsters*, 415 U.S. 423,  
 19 438–39 (1974) (footnote omitted).

20 Accordingly, “courts have recognized very few circumstances justifying the issuance of an  
 21 ex parte TRO.” *Reno Air Racing Ass’n v. McCord*, 452 F.3d 1126, 1131 (9th Cir. 2006). “For  
 22 example, an ex parte TRO may be appropriate ‘where notice to the adverse party is impossible  
 23 either because the identity of the adverse party is unknown or because a known party cannot be  
 24 located in time for a hearing.’” *Id.* (quoting *Am. Can Co. v. Mansukhani*, 742 F.2d 314, 322 (7th  
 25 Cir. 1984)). Alternatively, “[i]n cases where notice could have been given to the adverse party,  
 26 courts have recognized a very narrow band of cases in which ex parte orders are proper because  
 27 notice to the defendant would render fruitless the further prosecution of the action.” *Id.* (quoting  
 28 *Am. Can Co.*, 742 F.3d at 322).

Although Plaintiff does not frame its application for TRO as an ex parte one, the Court  
 treats it as such because there is no evidence of written or oral notice to the adverse party. There is  
 no evidence of service on Defendants and no declaration regarding oral notice.

1 As an ex parte application, Plaintiff has failed to meet the second requirement of Rule  
2 65(b)(1). Neither Plaintiff nor Plaintiff's counsel has certified in writing any efforts to give notice  
3 to Defendants. (*See* Doc. 3-9.) Plaintiff has also not demonstrated that notice is impossible or  
4 would render further prosecution of the action fruitless, as is required for an ex parte TRO. *Reno*  
5 *Air Racing*, 452 F.3d at 1131.

6 Because Plaintiff has not met the second requirement for a TRO without notice, Plaintiff's  
7 application is **DENIED**.

## 8 **2. Preliminary Injunction**

9 Plaintiff's application also requests a preliminary injunction. (*See* Doc. 3-1 at 16.) Under  
10 Rule 65(a)(1), "[t]he court may issue a preliminary injunction only on notice to the adverse party."  
11 Fed. R. Civ. P. 65(a)(1). Accordingly, to have their request for a preliminary injunction set for  
12 hearing, Plaintiff must serve Defendants with all documents they have filed in this matter,  
13 including the complaint, the application, counsel's declaration, and this Order by January 28,  
14 2011. Plaintiff must electronically file proof of service by February 2, 2011.

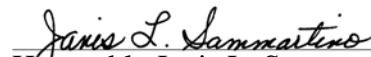
15 If Plaintiff timely serve and file all documents, the request for a preliminary injunction will  
16 be set for hearing on Friday, March 18, 2011 at 3:00 p.m. An opposition to the preliminary  
17 injunction **SHALL** be filed by February 18, 2011. A reply, if Plaintiff wishes to file one, **SHALL**  
18 be filed by February 25, 2011. If all documents are not served as directed, the matter will not be  
19 heard on March 25, 2011. Rather, Plaintiff must obtain the next available hearing date from  
20 chambers under Local Civil Rule 7.1(b).

## 21 **CONCLUSION**

22 For the reasons stated, Plaintiff's ex parte application for a temporary restraining order is  
23 **DENIED**.

24 **IT IS SO ORDERED.**

25  
26 DATED: January 19, 2011

27   
28 Honorable Janis L. Sammartino  
United States District Judge